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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 DARREN MICHAEL BRIN,

11 Plaintiff,

12 v.

13 JOSHUA HARTWICK, et al.,

14 Defendants.

CASE NO. C24-1019JLR

ORDER

15 **I. INTRODUCTION**

16 This matter is before the court on *pro se* Plaintiff Darren Michael Brin's second
17 motion for leave to file an amended complaint. (2d Mot. (Dkt. # 20-1); Reply (Dkt.
18 # 23); *see also* Prop. Am. Compl. (Dkt. # 20).) Defendants Joshua Hartwick, Felicia
19 Espana, James Jordal, and Keith Polzin (collectively, "Defendants") oppose Mr. Brin's
20 motion. (Resp. (Dkt. # 21).) The court has considered the parties' submissions, the
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1 balance of the record, and the applicable law. Being fully advised,¹ the court GRANTS
 2 in part and DENIES in part Mr. Brin’s motion.

3 II. BACKGROUND

4 Mr. Brin commenced this action in King County Superior Court on April 18,
 5 2024, alleging that Defendants violated his constitutional rights by subjecting him to a
 6 false arrest. (Compl. (Dkt. # 1-1) at 1-5.) In his original complaint, Mr. Brin asserted
 7 several federal claims under 42 U.S.C. § 1983, 42 U.S.C. § 1986, 18 U.S.C. §§ 241-42,
 8 and other state law claims. (*Id.* at 2-3.) He also asserted claims for “oath of office
 9 violations,” “armed abuse of office,” “armed abuse of authority,” “armed operating status
 10 w/o bond or insurance,” and “armed deprivation of rights.” (*Id.* at 3-4 (capitalization
 11 altered).) On July 11, 2024, Defendants removed the action to this court, invoking
 12 federal question subject matter jurisdiction. (Removal Not. (Dkt. # 1) ¶¶ 5-9.)
 13 Defendants answered Mr. Brin’s complaint on July 26, 2024. (Answer (Dkt. # 11).)
 14 Trial in this matter is set for October 20, 2025. (*See* 9/10/24 Order (Dkt. # 16).)

15 On February 25, 2025, Mr. Brin timely moved for leave to file an amended
 16 complaint. (*See* 1st Mot.; 9/10/24 Order (setting the deadline to amend pleadings for
 17 April 8, 2025).) On April 13, 2025, after the deadline to amend pleadings, Mr. Brin
 18 moved for leave to file the proposed amended complaint now before the court. (*See* 2d
 19 Mot.) Mr. Brin represents that he “rework[ed]” his proposed amended complaint “to
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21 ¹ The parties do not request oral argument (*see* 2d Mot.; Resp.), and the court concludes
 22 that oral argument is not necessary to decide the motion. *See* Local Rules W.D. Wash. LCR
 7(b)(4).

1 ensure clarity, specificity, and procedural compliance.” (*Id.* at 2.) Accordingly, the court
 2 construed Mr. Brin’s present motion as withdrawing his first motion for leave to file an
 3 amended complaint, and therefore struck Mr. Brin’s first motion for leave to file an
 4 amended complaint. (*See* 1st Mot.; 4/17/25 Order (Dkt. # 21).)

5 Mr. Brin’s proposed amended complaint alleges claims under § 1983 for
 6 violations of the Fourth Amendment, Fifth Amendment, and false imprisonment,
 7 § 1985(3), and § 1986. (Prop. Am. Compl. ¶¶ 20-24.)² Defendants ask the court to deny
 8 Mr. Brin’s motion to amend his complaint for failure to demonstrate good cause for
 9 moving to amend after the amended pleading deadline. (Resp. at 2.)

10 III. ANALYSIS

11 Ordinarily, Federal Rule of Civil Procedure 15(a) governs motions for leave to
 12 amend the complaint. Fed. R. Civ. P. 15. Once the court’s deadline for filing amended
 13 pleadings has passed, however, a party’s motion to amend a pleading is governed by Rule
 14 16. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607-08 (9th Cir. 1992). Under
 15 Rule 16, a party must show “good cause” for an amendment to justify modifying the case

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 17 ² Nearly all of the claims now alleged in Mr. Brin’s proposed amended complaint were
 18 alleged in his original complaint. Notably, however, his proposed amended complaint does not
 19 replead claims under 18 U.S.C. § 241, 18 U.S.C. § 242, the Washington State Constitution,
 20 claims under “Washington State SB-1310,” or claims for “Oath of Office Violations,” “Armed
 21 abuse of Office,” “Armed abuse of authority,” “Armed operating status w/o bond or insurance to
 22 counteract potential officer misconduct, or people’s rights violations,” or “Armed deprivation of
 Rights.” (*Compare* Compl. at 3-4 with, Prop. Am. Compl.) An amended complaint supersedes
 all previous complaints. *Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997),
overruled in part on other grounds, Lacey v. Maricopa County, 693 F.3d 896 (9th Cir. 2012).
 All facts and causes of action alleged in the original complaint that are not alleged in the
 amended complaint are waived. *Forsyth*, 114 F.3d at 1474. The court accordingly construes Mr.
 Brin’s filing of his proposed amended complaint as abandoning the aforementioned claims from
 his original complaint that he did not replead.

scheduling order. Fed. R. Civ. P. 16(b)(4) (“A schedule may be modified only for good cause and with the judge's consent.”). “Rule 16(b)’s ‘good cause’ standard primarily considers the diligence of the party seeking the amendment.” *Johnson*, 975 F.2d at 609.

If a party demonstrates good cause for a belated motion to amend, the moving party “must then demonstrate that amending the pleading at issue is proper under Rule 15.” *Todd R. v. Premiera Blue Cross Blue Shield of Alaska*, No. C17-1041JLR, 2021 WL 322726, at *2 (W.D. Wash. Feb. 1, 2021) (citations omitted). Under Rule 15, the court should freely grant leave to amend “when justice so requires.” Fed. R. Civ. P. 15(a)(2). The court assesses five factors in considering whether to grant leave to amend a pleading under Rule 15(a)(2): (1) bad faith, (2) undue delay, (3) prejudice to the opposing party, (4) futility of amendment, and (5) whether the party has previously amended its pleading. *Allen v. City of Beverly Hills*, 911 F.2d 367, 373 (9th Cir. 1990).

Below, the court first assesses whether Mr. Brin has demonstrated good cause for his belated request for leave to amend, and then addresses whether leave to amend is proper.

A. Good Cause Standard Under Rule 16

Defendants assert that Mr. Brin has not demonstrated good cause. (Resp. at 2.) Mr. Brin responds that good cause exists because he “promptly sought amendment after receiving” Defendants’ response to his earlier proposed amended complaint, and “acted diligently in addressing procedural concerns.” (Reply at 2.) He also states that “any delay . . . arose from a sincere effort to follow [c]ourt directives and ensure procedural compliance.” (*Id.*) Mr. Brin filed his earlier motion to amend on February 25, 2025—

1 well before the April 8, 2025 deadline for amended pleadings. (*See* 1st Mot.; 9/10/24
2 Order.) Mr. Brin filed the present motion and proposed amended complaint five days
3 after the amended pleadings deadline to “rework[]” his proposed amended complaint to
4 address Defendants’ response to his earlier motion. (*See* 2d Mot. at 2.) Accordingly, the
5 court concludes that Mr. Brin acted diligently and has demonstrated good cause to
6 amend.

7 **B. The Propriety of the Proposed Amended Pleading Under Rule 15**

8 Having demonstrated good cause to amend, Mr. Brin must also “demonstrate that
9 amending the pleading at issue is proper under Rule 15.” *Todd*, 2021 WL 322726, at *2.
10 Because the court has already concluded that Mr. Brin acted diligently absent undue
11 delay, there is no evidence of bad faith, and he has not previously amended his complaint,
12 the court examines only the prejudice and futility factors below. *See Allen*, 911 F.2d at
13 373.

14 a. Prejudice

15 Defendants do not assert that they would be prejudiced by Mr. Brin’s proposed
16 amendments. (*See generally* Resp.) Furthermore, the allegations in the proposed
17 amended complaint do not significantly depart from those of his original complaint, and
18 Mr. Brin sought leave to amend only five days after the applicable deadline had passed.
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1 (Compare Compl., with Prop. Am. Compl.) Accordingly, the court finds no prejudice to
2 Defendants here.

3 b. Futility

4 “Futility alone can justify the denial of a motion for leave to amend.” *Nunes v.*
5 *Ashcroft*, 375 F.3d 805, 808 (9th Cir. 2004). A proposed amendment is futile if the
6 amendment fails to state a claim. *See Page v. Clark Cty. Fire Dist. 6*, 733 F. Supp. 3d
7 1006, 1024 (W.D. Wash. 2024); *see also Steckman v. Hart Brewing, Inc.*, 143 F.3d 1293,
8 1298 (9th Cir. 1998) (“A claim in a proposed amended complaint is futile if it would be
9 immediately subject to dismissal pursuant to Rule 12(b)(6) . . . for failure to state a
10 claim”).

11 To state a claim, a plaintiff must provide “sufficient factual matter, accepted as
12 true, to state a claim that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678
13 (2009). “A claim has facial plausibility when the plaintiff pleads factual content that allows
14 the court to draw the reasonable inference that the defendant[s] [are] liable for the
15 misconduct alleged.” *Id.* A proposed amendment is futile “only if no set of facts can be
16 proved under the amendment to the pleadings that would constitute a valid and sufficient
17 claim or defense[.]” *Barahona v. Union Pac. R.R. Co.*, 881 F.3d 1122, 1134 (9th Cir.
18 2018). The court examines each of Mr. Brin’s claims in his proposed amended complaint
19 with these principles in mind.

20 i. *Fourth Amendment Claim for Unlawful Detention and Search*

21 To state a claim under § 1983 for unlawful detention under the Fourth
22 Amendment, a plaintiff must allege that he was detained without reasonable suspicion.

1 *Hills v. City of Chula Vista*, No. 23-cv-1067-DMS-DDL, 2024 WL 4896588, at *4 (S.D.
2 Cal. Nov. 26, 2024) (citing *Florida v. Royer*, 460 U.S. 491, 500 (1983)). Reasonable
3 suspicion exists when, “in light of the totality of the circumstances, the officer [who
4 detained the plaintiff] had a particularized and objective basis for suspecting the
5 particular person stopped of criminal activity.” *U.S. v. Basher*, 629 F.3d 1161, 1165 (9th
6 Cir. 2011).

7 Here, Mr. Brin alleges that Defendants unlawfully detained him without
8 reasonable suspicion. (Prop. Am. Compl. ¶¶ 3, 15; *see id.* ¶ 16.) He asserts that on or
9 about February 23, 2023 or February 24, 2023, he was standing outside when Sergeant
10 Hartwick and Officer Polzin approached him, “asked vague questions” and handcuffed
11 him, “despite that [he] lack[ed] any physical resemblance to the suspect [Defendants]
12 were allegedly looking for” and despite that Defendants did not witness him commit a
13 crime. (*Id.* ¶¶ 2, 3, 11.) He further asserts that Officer Espana conducted a “‘field show’
14 after the actual suspect was ruled out,” yet Mr. Brin “remained in handcuffs.” (*Id.* ¶ 12.)
15 He also alleges that Officer Espana “altered her narrative report and signed a witness
16 statement she did not personally observe.” (*Id.* ¶ 13.) Mr. Brin contends that Sergeant
17 Hartwick said that Defendants had probable cause to detain him, but that “a judge
18 reviewing the related criminal matter against the alleged suspect explicitly found that
19 there was no probable cause and dismissed the case.” (*Id.* ¶ 17.) The court concludes
20 that Mr. Brin’s proposed amended complaint alleges sufficient facts to show that he was
21 detained without reasonable suspicion. Accordingly, the court grants Mr. Brin’s motion
22 with respect to his Fourth Amendment unlawful detention claim.

1 The court reaches a different conclusion regarding Mr. Brin’s Fourth Amendment
 2 unlawful search claim. (*Id.*) The Fourth Amendment provides, in relevant part, “[t]he
 3 right of the people to be secure in their persons, houses, papers, and effects, against
 4 unreasonable searches[.]” U.S. Constit. amend. IV. “The threshold consideration in
 5 whether a search occurs under the Fourth Amendment is whether ‘a person has a
 6 constitutionally protected reasonable expectation of privacy.’” *Audrey G. v. City of*
 7 *Lafayette*, No. 21-CV-03545-WHO, 2021 WL 5565839, at *3 (N.D. Cal. Nov. 29, 2021).
 8 Mr. Brin alleges that he was “searched” by Sergeant Hartwick and Officer Polzin, but
 9 does not provide any facts describing the actions of the officers, including what they
 10 allegedly did to search Mr. Brin. (*See, e.g.*, Prop. Am. Compl. ¶ 11; *see also id.* ¶¶ 2, 15,
 11 20.) Mr. Brin’s allegations are conclusory and do not permit the court to draw the
 12 reasonable inference that Defendants committed the alleged misconduct. *Ashcroft v.*
 13 *Iqbal*, 556 U.S. 662, 678 (2009). *See Manlove v. Cnty. of San Diego*, No. 3:24-CV-0801-
 14 CAB-MMP, 2024 WL 5112744, at *4 (S.D. Cal. Dec. 13, 2024) (dismissing plaintiff’s
 15 Fourth Amendment unlawful search claim in part because plaintiff did not allege facts to
 16 show what the defendants did to search his vehicle). Accordingly, the court denies Mr.
 17 Brin’s motion with respect to his Fourth Amendment unlawful search claim.

18 *ii. Fifth Amendment Claim*

19 Mr. Brin also alleges a § 1983 claim for unlawful detention under the Fifth
 20 Amendment. (Prop. Am. Compl. ¶ 22.) This claim fails as a matter of law. The Fifth
 21 Amendment prohibits *federal* officials—not state officials—from depriving persons of
 22 due process. *See Castillo v. McFadden*, 399 F.3d 993, 1002 n.5 (9th Cir. 2005). Mr.

1 Brin alleges that each of Defendants are employees of the City of Bothell Police
 2 Department; therefore, Defendants are not federal officials. (*See* Prop. Am. Compl. ¶¶ 8-
 3 9.) Accordingly, Mr. Brin’s motion is denied with respect to his Fifth Amendment claim.

4 *iii. False Imprisonment*

5 To state a § 1983 claim for false imprisonment, Mr. Brin must allege facts
 6 demonstrating that Defendants did not have probable cause to arrest³ him. *See Cabrera*
 7 *v. City of Huntington Park*, 159 F.3d 374, 380 (9th Cir. 1998). Mr. Brin alleges that he
 8 was unlawfully restrained without probable cause. (Prop. Am. Compl. ¶¶ 3, 11, 13, 21;
 9 *see id.* ¶ 2 (alleging that Defendants detained him even though he lacked physical
 10 resemblance to the suspect).) These allegations accordingly suffice to state a § 1983 false
 11 imprisonment claim, and Mr. Brin’s motion is granted with respect to this claim.

12 *iv. Section 1985(3) Claim*

13 Mr. Brin also pleads that Defendants violated 42 U.S.C. § 1985(3). (*Id.* ¶ 23.)
 14 Section 1985(3) “prohibits conspiracies for the purpose of depriving, either directly or
 15 indirectly, any person or class of persons of the equal protection of the laws[.]” *Holgate*
 16 *v. Baldwin*, 425 F.3d 671, 676 (9th Cir. 2005). Mr. Brin does not allege any facts
 17 sufficient to plead a conspiracy under § 1985(3). Allegations that have been held
 18 sufficiently specific to properly state a claim for conspiracy include those that “identify

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 20 ³ The Ninth Circuit has defined “arrest” as: “the taking or detainment (of a
 21 person) in custody by authority of law; legal restraint of the person; custody;
 22 imprisonment.” *Yith v. Nielsen*, 881 F.3d 1155, 1167 (9th Cir. 2018) (quoting *United*
States v. Leal-Felix, 665 F.3d 1037, 1041 (9th Cir. 2011)).

the period of the conspiracy, the object of the conspiracy, and certain other actions of the alleged conspirators taken to achieve that purpose,” as well as those that “identify which defendants conspired, how they conspired and how the conspiracy led to a deprivation of . . . constitutional rights[.]” *Holgate*, 425 F.3d at 998-99 (internal quotations and citations omitted). Other than alleging that Defendants “acted in concert to deprive [him] of equal protection under the law[.]” Mr. Brin fails to plead any facts showing an agreement among Defendants to conspire against him. Accordingly, as pleaded, Mr. Brin’s claims are insufficient to state a § 1985(3) claim. (Prop. Am. Compl. ¶ 23; *see generally* Prop. Am. Compl.) The court therefore denies Mr. Brin’s motion for leave to amend with respect to his § 1985(3) claim.

v. Section 1986 Claim

Mr. Brin also alleges that Defendants violated § 1986 because “[e]ach Defendant had the power and duty to prevent violations and failed to do so.” (*Id.* ¶ 24.) Under § 1986,

[e]very person who, having knowledge that any of the wrongs conspired to be done, and mentioned in [S]ection 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured[.]

42 U.S.C. § 1986. In order to assert a § 1986 claim, Mr. Brin must also plausibly plead a § 1985 claim. *See Farley v. Henderson*, 883 F.2d 709, 711 n.3 (9th Cir. 1989) (“[Plaintiff] is precluded from bringing a claim under 42 U.S.C. § 1986 because he has failed to allege a claim under 42 U.S.C. § 1985.”) Because Mr. Brin has not

1 plausibly pleaded a claim under § 1985(3), his § 1986 claim also fails. Accordingly, Mr.
2 Brin's motion is denied with respect to his § 1986 claim.

3 *vi. Claims Against Officer Jordal*

4 A plaintiff must set forth the specific factual basis supporting his claim for each
5 individual defendant's liability. *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980).
6 Mr. Brin does not include any allegations showing that Officer Jordal participated in any
7 of the alleged violations. (*See generally* Prop. Am. Compl.) Accordingly, the court
8 denies Mr. Brin's motion with respect to his claims against Officer Jordal.

9 **C. Limited Leave to Amend**

10 As stated, the court denies Mr. Brin's motion with respect to his Fourth
11 Amendment unlawful search claim, his Fifth Amendment claim, his § 1985(3) claim, his
12 § 1986 claim, and his claims against Officer Jordal. A trial court may dismiss a claim
13 *sua sponte* pursuant to Federal Rule of Civil Procedure 12(b)(6) after giving the plaintiff
14 notice of its intent to dismiss and affording the plaintiff an opportunity to respond. *Reed*
15 *v. Lieurance*, 863 F.3d 1196, 1207 (9th Cir. 2017) (quoting *Lee v. City of Los Angeles*,
16 250 F.3d 668, 683 n.7 (9th Cir. 2001)). A *sua sponte* dismissal without leave to amend is
17 appropriate "only where the plaintiff cannot possibly win relief." *Id.* at 1208 (quoting
18 *Lee*, 250 F.3d at 683 n.7 (internal quotation marks omitted)).

19 Because the court concludes that Mr. Brin could possibly state a Fourth
20 Amendment unlawful search claim, a § 1985(3) claim, a § 1986 claim, or claims against
21 Officer Jordal with additional factual allegations, the court will permit him to include
22 these claims—in addition to his Fourth Amendment unlawful detention and false

1 imprisonment claims—in his amended complaint.⁴ Mr. Brin is ORDERED to file an
 2 amended complaint that comports with this order **by May 19, 2025**. The court warns Mr.
 3 Brin, however, that failure to correct the deficiencies identified in this order with respect
 4 to his Fourth Amendment unlawful search claim, his § 1985(3) claim, his § 1986 claim,
 5 and his claims against Officer Jordal will result in dismissal of those claims with
 6 prejudice.

7 IV. CONCLUSION

8 For the foregoing reasons, Mr. Brin’s motion for leave to file an amended
 9 complaint is GRANTED in part and DENIED in part (Dkt. # 20). Specifically:

10 (1) Mr. Brin’s motion is GRANTED with respect to his Fourth Amendment
 11 unlawful detention claim;

12 (2) Mr. Brin’s motion is GRANTED with respect to his false imprisonment claim;

13 (3) Mr. Brin’s motion is DENIED with respect to his Fifth Amendment claim, and
 14 his Fifth Amendment claim is DISMISSED with prejudice;


15 (4) Mr. Brin’s motion is DENIED with respect to his Fourth Amendment unlawful
 16 search claim, his § 1985(3) claim, his § 1986 claim, and his claims against Officer Jordal.
 17 These claims are DISMISSED without prejudice and with leave to amend;

18 (5) Mr. Brin is ORDERED to file his amended complaint on the docket that
 19 conforms to the rulings of this order **by May 19, 2025**. As to Mr. Brin’s Fourth
 20 Amendment unlawful search claim, his § 1985(3) claim, his § 1986 claim, and his claims

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 22 ⁴ As stated above, Mr. Brin’s Fifth Amendment claim fails as a matter of law, so Mr. Brin
 is not permitted to include that claim in his amended complaint.

1 against Officer Jordal, Mr. Brin's amended complaint must address the deficiencies
2 identified in this order. Failure to do so will result in dismissal of his Fourth Amendment
3 unlawful search claim, his § 1985(3) claim, his § 1986 claim, and his claims against
4 Officer Jordal with prejudice.

5 Dated this 9th day of May, 2025.

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7 JAMES L. ROBART
United States District Judge
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